

1 Richard R. Waite, Esq. (SBN: 097942)
Keeney Waite & Stevens
2 125 North Acacia Avenue, Suite 101
Solana Beach, CA 92075
Telephone: 858.523.2133
3 Facsimile: 858.523.2135
Web Address: www.keenlaw.com

4 William D. Marler, Esq.
MARLER CLARK, LLP, PS
5 701 Fifth Avenue, Suite 6600
Seattle, WA 98104
6 Telephone: 206.348.1888
Facsimile: 206.346.1898

7 Attorneys for: The Plaintiffs Martin

FILED
FEB - 6 2008
FRESNO COUNTY SUPERIOR COURT
By _____ GS-DEPUTY

This case has been assigned to
Judge Donald S. Black for all purposes

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

12
13 TONY MARTIN and MARY MCGONIGLE-)
MARTIN, individually and as guardians ad)
14 litem for CHRIS MARTIN, a minor,)

15 Plaintiffs,)

16 v.)

17 ORGANIC PASTURES DAIRY COMPANY,)
L.L.C., a California corporation, SPROUTS)
18 NATURAL MARKET, INC., a California)
Corporation; and DOES 1-20, inclusive)

19)
20 Defendants.)

CASE NUMBER

08 CE CG 00408

DSB

**COMPLAINT FOR
PERSONAL INJURIES
(Strict Product Liability,
Implied Warranty and Negligence)**

JURY TRIAL DEMANDED

21 The plaintiffs allege as follows:
22

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

1.2 The defendant ORGANIC PASTURES DAIRY COMPANY, L.L.C., (hereinafter referred to as “Organic Pastures”), is a California limited liability company with its principal place of business located at 7221 South Jameson Avenue, Fresno, California. At all times relevant hereto, Organic Pastures manufactured and sold dairy products within the State of California.

1.4 Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 20, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend its complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes that each fictitiously named DOE defendant is the agent and/or employee of all other named defendants and in doing the acts herein alleged, were acting within the scope and course of this agency or employment.

1

2 **II. JURISDICTION AND VENUE**

3 2.1 This Court is vested with jurisdiction over the defendants because the
4 defendants reside, and purport to have their respective principal places of business located,
5 within the State of California, and the events alleged herein occurred in the State of California.

6 2.2 Venue is proper in Fresno County because the defendant Organic Pastures
7 purports to have its principal place of business in the County.

8 **III. RELEVANT FACTS**

9 3.1 E. coli O157:H7: *Escherichia coli* are the name of a common family of
10 bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific
11 member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. After a
12 susceptible individual ingests *E. coli* O157:H7, the bacteria attaches to the inside surface of the
13 large intestine and initiates an inflammatory reaction of the intestine. The mean incubation
14 period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be
15 two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7
16 infection presents with abdominal cramps, bloody diarrhea, and vomiting. *E. coli* O157:H7
17 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody
18 diarrhea accompanied by excruciating abdominal pain to life-threatening complications.

19 3.2 About five to ten percent of individuals infected with *E. coli* O157:H7 develop
20 hemolytic uremic syndrome (HUS). HUS was first described in 1955, and today is recognized
21 as the most common cause of kidney failure in children. HUS is believed to develop when the
22 toxin from the bacteria, known as Shiga-like toxin (SLT), enters the circulation through the

1 inflamed bowel wall. Some organs seem more susceptible, perhaps due to the presence of
2 increased numbers of receptors, and include the kidney, pancreas, and brain. By definition,
3 when fully expressed, HUS presents with the triad of hemolytic anemia (destruction of red
4 blood cells), thrombocytopenia (low platelet count), and acute renal failure (loss of the filter
5 function of the kidney). The most important aspect of the treatment of patients with HUS
6 remains excellent supportive care, which includes: close observation in a tertiary-care pediatric
7 facility; meticulous attention to fluid, electrolyte, and metabolic balance; optimal nutrition; and
8 careful blood pressure control. Blood transfusions may be necessary several times during the
9 course of the active stage. Dialysis or interventional therapy, such as plasma exchange
10 (plasmapheresis), may be necessary for patients at risk for a bad outcome. There is no known
11 therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two
12 weeks during which a variety of complications are possible. HUS is a frightening condition
13 that even in the best American centers has a mortality rate of about five percent. Among
14 survivors, about five percent will eventually develop end stage renal disease (ESRD) with a
15 resulting need for dialysis or even transplantation.

16 3.3 The Outbreak: On September 18, 2006, the California Department of Health
17 Services (CDHS) was notified of two patients hospitalized with HUS. One of these patients
18 had a culture confirmed *E. coli* O157:H7 infection. Both patients had consumed milk
19 manufactured and sold by the defendant in the week prior to onset of illness. Four additional
20 cases of *E. coli* O157:H7 infection in children that had consumed the defendant's milk or
21 colostrum were identified in the following three weeks. Each of the case patients' *E. coli*
22 O157:H7 isolates were genetically indistinguishable. The genetic fingerprint of the *E. coli*

1 O157:H7 shared by the five case patients was new and different from all other patterns in the
2 national database operated by the Center for Disease Control (CDC). The CDHS and the
3 California Department of Food and Agriculture (CDFA) conducted an environmental
4 investigation of the outbreak. The investigation revealed the defendant's dairy products from
5 store shelves to contain unusually high aerobic plate counts. Investigation of the defendant's
6 dairy identified cows that tested positive for *E. coli* O157:H7, although the strain differed
7 from the outbreak strain. CDHS concluded that the likely source of the *E. coli* O157:H7
8 infections was the defendant's dairy products.

9 3.4 Plaintiff Chris Martin's Illness: On or about September 2, 2006, Chris Martin
10 consumed Organic Pastures Raw Milk, purchased at Sprouts in Temecula, California on or
11 about September 1, 2006.

12 3.5 On or about September 5, 2006, Chris Martin developed a gastrointestinal
13 illness. Symptoms included nausea, vomiting, bloody diarrhea and abdominal cramping.
14 Chris Martin's condition worsened, and he eventually developed HUS.

15 3.6 Chris Martin was hospitalized from September 7, through November 2, 2006.
16 While hospitalized, Chris Martin suffered life-threatening injuries that have left him
17 permanently injured. His severe condition required him to be transported by helicopter to a
18 children's hospital and placed in pediatric intensive care. Chris Martin's kidneys failed, and
19 he required weeks of daily dialysis. He also required multiple blood transfusions. As a result
20 of impending congestive heart failure, Chris Martin was placed on a ventilator. He remained
21 on the ventilator for five days, was briefly freed of it, and then returned for several more days.
22 Chris Martin suffered a number of seizures as a result of his HUS. He also developed high

1 blood pressure, and pancreatitis. To date Chris Martin has incurred over \$450,000.00 in
2 medical bills. Currently, Chris Martin is receiving ongoing treatment of the injuries he
3 suffered as a result of his *E. coli* O157:H7 infection and HUS.

4 **IV. FIRST CAUSE OF ACTION**

5 **(Strict Liability)**

6 4.1 The plaintiffs incorporate paragraphs 1.1 through 3.6 of this Complaint as if
7 each paragraph was set forth herein in its entirety.

8 4.2 The defendants are product manufacturers and sellers of the *E. coli* O157:H7 -
9 contaminated dairy products that injured the plaintiffs.

10 4.3 The defendants owed a duty to the plaintiffs to manufacture and sell a product
11 that was reasonably safe in construction and that did not materially deviate from applicable
12 design specifications or otherwise deviate in some material way from otherwise identical units
13 in the food products manufactured by the defendants.

14 4.4 The food that injured the plaintiffs, manufactured and sold by the defendants,
15 was not reasonably safe in construction, and did not conform to the defendants' implied
16 warranties, because it was contaminated and adulterated with, among other things, *E. coli*
17 O157:H7.

18 4.5 Because the food manufactured and sold by the defendants that Chris Martin
19 consumed was not reasonably safe in construction and did not conform to the implied
20 warranties of the defendants, the defendants are strictly liable for the personal and economic
21 injuries suffered by the plaintiffs as a result of Chris Martin's consumption of contaminated
22 food.

1 4.6 As a direct and proximate cause of the manufacture, processing, and sale of the
2 contaminated food products of the defendants, and the consumption thereof by Chris Martin,
3 the plaintiffs have suffered general and special, incidental and consequential damages, which
4 damages shall be fully proven at the appropriate time, including, but not limited to, damages
5 for loss of enjoyment of life, both past and future; medical and medical related expenses, both
6 past and future; travel and travel-related expenses, past and future; emotional distress, and
7 future emotional distress; pharmaceutical expenses, past and future; lost wages, past and
8 future; lost earning capacity, past and future, and other ordinary, incidental and consequential
9 damages as would be anticipated to arise under the circumstances.

10 **V. SECOND CAUSE OF ACTION**

11 **(Negligence)**

12 5.1 The plaintiffs incorporate paragraphs 1.1 through 4.6 of this Complaint as if
13 each paragraph was set forth herein in its entirety.

14 5.2 The defendants manufactured, distributed, and sold a product that was not
15 reasonably safe as designed or manufactured.

16 5.3 The defendants were negligent in manufacturing, distributing, and selling a
17 product that was not reasonably safe because adequate warnings or instructions were not
18 provided, including but not limited to the warning that their product may contain *E. coli*
19 O157:H7, and thus should not be given to, or eaten by humans.

20 5.4 The defendants had a duty to comply with all statutory and regulatory
21 provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale
22 of their food products, including, but not limited to, the Federal Food, Drug, and Cosmetics

1 Act, and its California State equivalent, which ban the manufacture, sale, and distribution of
2 any "adulterated" food.

3 5.5 The plaintiffs are among the class of persons designed to be protected by the
4 statutory and regulatory provisions pertaining to the manufacture, distribution, storage,
5 labeling, and sale of food by the defendants.

6 5.6 The defendants owed a duty to the plaintiffs to use supplies and raw materials
7 that complied with federal, state, and local food laws, ordinances, and regulations; that were
8 from safe and reliable sources; that were clean, wholesome, and free from spoilage and
9 adulteration; and that were safe for human consumption.

10 5.7 The defendants owed a duty to the plaintiffs to use reasonable care in the
11 selection, supervision, and monitoring of its food suppliers or other subcontractors.

12 5.8 The defendants breached the aforementioned duties as alleged herein.

13 5.9 As a result of the negligence of the defendant, as herein alleged, the plaintiffs
14 suffered severe and permanent personal injuries, as well as economic loss.

15 **VI. THIRD CAUSE OF ACTION**

16 **(Breach of Implied Warranty)**

17 6.1 The plaintiffs repeat and re-allege each and every allegation contained in
18 Paragraphs 1.1 through 5.9 of this Complaint as if each paragraph was set forth herein in its
19 entirety.

20 6.2 The defendants impliedly warranted that their food products were of
21 merchantable quality, and were safe and fit for human consumption. The plaintiffs reasonably
22

1 relied upon the skill and judgment of the defendants as to whether the products were of
2 merchantable quality and fit for human consumption.

3 6.3. The defendants breached these implied warranties in that the food products of
4 the defendants were contaminated with *E. coli* O157:H7.

5 6.4 As a direct, legal and proximate result of the breach of implied warranties, the
6 plaintiffs suffered and may continue to suffer injury, harm, special damages and economic
7 loss.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, the plaintiffs pray for judgment against the defendant, as follows, as to
10 each and every cause of action stated herein:

11 1. For general damages in a sum within the jurisdiction of this Court to be
12 determined according to proof;

13 2. For sums incurred and to be incurred for services of hospitals, physicians,
14 surgeons, nurses and other professional services;

15 3. For sums incurred and to be incurred for medicines, ambulance service, x-rays
16 and other medical supplies and services;

17 4. For loss of income or loss of earning capacity, or both, incurred and to be
18 incurred according to proof;

19 5. For interest as provided by law;


20 6. For costs of suit herein incurred; and

21 7. For such other and further relief as the Court deems just and proper.


22 ///

1
2 Dated this 5 day of February, 2008.

3 KEENEY, WAITE & STEVENS

4
5 By: 
6 Richard R. Waite, SBN # 097942
7 125 North Acacia Avenue, Suite 101
8 Solana Beach, CA 92075
9 858.523.2133
10 Attorneys for Plaintiffs

11 MARLER CLARK, LLP, PS

12 By: 
13 William D. Marler, WSBA # 17233
14 701 Fifth Avenue, Suite 6600
15 Seattle, WA 98104
16 206.346.1888
17 Attorneys for Plaintiffs